

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:10CR266
)
Plaintiff,)
)
vs.)
)
ROBERT L. TAYLOR,)
)
Defendant.)

MEMORANDUM
AND ORDER

This matter is before the Court on the Defendant's pro se motion to reduce sentence (Filing No. 62) and the motion filed by David R. Stickman, Federal Public Defender for the District of Nebraska (Filing No. 67). The Court has also considered the Defendant's supplemental filing (Filing No. 74).

The Defendant, Robert L. Taylor was charged in Count I of the Indictment regarding conduct that occurred on or about June 3, 2010. The Fair Sentencing Act ("FSA"), which increased the amount of crack cocaine triggering the 10-year mandatory minimum sentence from 50 to 280 grams, was signed into law on August 3, 2010. On February 14, 2011, Taylor was sentenced to the mandatory minimum sentence of 120 months imprisonment on Count I of the Indictment. Taylor bases his motion to reduce his sentence on the recent amendments to the crack cocaine sentencing guidelines.

The FSA does not state it is retroactive. The Eighth Circuit has concluded the controlling factor is the date when the crime was committed and, therefore, the FSA is not retroactive in Taylor's case. See *United States v. Sidney*, 648 F.3d 904, 906 & 910 (8th Cir.

2011).¹ Because the 120-month mandatory minimum sentence still applies, Taylor is not aided by the changes to the sentencing guidelines.

Because Taylor is not entitled to relief, the Federal Public Defender's motion to withdraw will be granted.

IT IS ORDERED:

1. The Defendant's motion to reduce his sentence as a result of the recent amendments to the crack cocaine sentencing guidelines (Filing No. 62) is denied;
2. The motion to withdraw (Filing No. 67) filed by David R. Stickman, Federal Public Defender for the District of Nebraska, on behalf of his office, is granted; and
3. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 7th day of December, 2011.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

¹The Court notes that the United States Supreme Court has granted certiorari with respect to this issue. *Hill v. United States*, 417 F. App'x 560 (7th Cir.), cert. granted, ___ S. Ct. __, 2011 WL 3472365 (U.S. Nov. 28, 2011) (No. 11-5721); *United States v. Fisher*, 635 F.3d 336, (7th Cir.), cert granted sub nom *Dorsey v. United States*, ___ S. Ct. __ (U.S. Nov. 28, 2011) (No. 11-5683).